

1 Karen P. Kimmey (State Bar No. 173284)  
Farella Braun + Martel LLP  
2 235 Montgomery Street, 17<sup>th</sup> Floor  
San Francisco, California 94104  
3 Telephone: (415) 954-4400  
kkimmey@fbm.com

4 Maeve L. O'Connor (appearance pro hac vice)  
5 Elliot Greenfield (appearance pro hac vice)  
Brandon Fetzer (appearance pro hac vice)  
6 Debevoise & Plimpton LLP  
919 Third Avenue  
7 New York, New York 10022  
Telephone: (212) 909-6000  
8 mloconnor@debevoise.com  
egreenfield@debevoise.com  
9 bfetzer@debevoise.com

10 Attorneys for Defendants  
ROBINHOOD MARKETS, INC.;  
11 ROBINHOOD FINANCIAL LLC;  
ROBINHOOD SECURITIES, LLC

12 **UNITED STATES DISTRICT COURT**  
13  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **OAKLAND DIVISION**

16 IN RE ROBINHOOD ORDER FLOW  
LITIGATION

Master File 4:20-cv-09328-YGR

17 **DEFENDANTS' NOTICE OF MOTION**  
18 **AND MOTION TO DISMISS SECOND**  
19 **CONSOLIDATED AMENDED**  
20 **COMPLAINT; MEMORANDUM OF**  
21 **POINTS AND AUTHORITIES IN**  
22 **SUPPORT THEREOF**

Date: May 17, 2022  
Time: 2:00 p.m.  
Judge: Hon. Yvonne Gonzalez Rogers  
Ctrm: 1, 4th Floor

## TABLE OF CONTENTS

1	NOTICE OF MOTION AND MOTION .....	1
2	STATEMENT OF RELIEF SOUGHT .....	1
3	MEMORANDUM OF POINTS AND AUTHORITIES .....	2
4	STATEMENT OF ISSUES TO BE DECIDED.....	2
5	PRELIMINARY STATEMENT.....	2
6	STATEMENT OF FACTS.....	5
7	I. THE PARTIES.....	5
8	II. PAYMENT FOR ORDER FLOW.....	5
9	III. THE DUTY OF BEST EXECUTION.....	6
10	IV. ROBINHOOD’S COMPLIANCE WITH THE DUTY OF BEST EXECUTION.....	7
11	V. ROBINHOOD’S STATEMENTS ABOUT PAYMENT FOR ORDER FLOW	
12	AND EXECUTION QUALITY.....	8
13	A. Payment for Order Flow.....	8
14	B. Execution Quality.....	10
15	ARGUMENT .....	10
16	I. PLAINTIFF FAILS TO STATE A CLAIM UNDER SECTION 10(b) AND RULE	
17	10b-5(b).....	10
18	A. Plaintiff Fails to Plead an Actionable Misstatement or Omission.....	11
19	1. Robinhood Did Not Misrepresent the Commission-Free Nature of	
20	Its Trading Platform.....	11
21	2. Robinhood’s Limited Comparison of Two Execution Quality	
22	Metrics to Other Brokerages Was Not False or Misleading.....	12
23	3. Robinhood Repeatedly Disclosed Its Receipt of Payment for Order	
24	Flow as a Revenue Source.....	13
25	4. The Alleged Omission of Information Regarding Robinhood’s	
26	“Unique Business Model” Is Not Actionable.....	15
27	B. Plaintiff Fails to Plead Scienter.....	16
28	1. Plaintiff’s Generalized Allegations Are Insufficient.....	17
	2. The Opposing Inference of Nonfraudulent Intent Is Far More	
	Compelling.....	19
	C. Plaintiff Fails to Plead Reliance.....	19
	II. PLAINTIFF FAILS TO STATE A CLAIM UNDER RULE 10b-5(a) OR 10b-5(c).....	21
	III. DISMISSAL WITH PREJUDICE IS WARRANTED.....	23
	CONCLUSION .....	24

## TABLE OF AUTHORITIES

### CASES

<i>Affiliated Ute Citizens of Utah v. United States</i> , 406 U.S. 128 (1972) .....	<i>passim</i>
<i>Basic Inc. v. Levinson</i> , 485 U.S. 224 (1988) .....	<i>passim</i>
<i>Binder v. Gillespie</i> , 184 F.3d 1059 (9th Cir. 1999) .....	20
<i>Bodri v. GoPro, Inc.</i> , 252 F. Supp. 3d 912 (N.D. Cal. 2017) .....	12
<i>Crago v. Charles Schwab &amp; Co.</i> , 2021 WL 4990234 (N.D. Cal. Oct. 27, 2021) .....	20, 21
<i>Desai v. Deutsche Bank Sec. Ltd.</i> , 573 F.3d 931 (9th Cir. 2009) .....	23
<i>Destfino v. Reiswig</i> , 630 F.3d 952 (9th Cir. 2011) .....	23
<i>Fleming v. Charles Schwab Corp.</i> , 878 F.3d 1146 (9th Cir. 2017) .....	6
<i>George v. Cal. Infrastructure &amp; Econ. Dev. Bank</i> , 2010 WL 2383520 (E.D. Cal. June 10, 2010) .....	21
<i>Goldman Sachs Grp., Inc. v. Ark. Tchr. Ret. Sys.</i> , 141 S. Ct. 1951 (2021) .....	20
<i>Heliotrope Gen., Inc. v. Ford Motor Co.</i> , 189 F.3d 971 (9th Cir. 1999) .....	15
<i>In re Kalobios Pharms., Inc. Sec. Litig.</i> , 258 F. Supp. 3d 999 (N.D. Cal. 2017) .....	15
<i>In re Nektar Therapeutics</i> , 2020 WL 3962004 (N.D. Cal. July 13, 2020) .....	22
<i>In re Rigel Pharms., Inc. Sec. Litig.</i> , 697 F.3d 869 (9th Cir. 2012) .....	10
<i>In re Smith Barney Transfer Agent Litig.</i> , 884 F. Supp. 2d 152 (S.D.N.Y. 2012) .....	22

1	<i>In re Twitter, Inc. Sec. Litig.</i> ,	
2	506 F. Supp. 3d 867 (N.D. Cal. 2020) .....	10, 16, 17
3	<i>In re Van Wagoner Funds, Inc. Sec. Litig.</i> ,	
4	382 F. Supp. 2d 1173 (N.D. Cal. 2004) .....	21
5	<i>Jackson v. Abernathy</i> ,	
6	960 F.3d 94 (2d Cir. 2020) .....	17
7	<i>Jui-Yang Hong v. Extreme Networks, Inc.</i> ,	
8	2017 WL 1508991 (N.D. Cal. Apr. 27, 2017) .....	18
9	<i>Kaplan v. Charlier</i> ,	
10	426 F. App'x 547 (9th Cir. 2011) .....	17
11	<i>Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.</i> ,	
12	940 F.2d 397 (9th Cir. 1991) .....	22
13	<i>Lim v. Charles Schwab &amp; Co., Inc.</i> ,	
14	2015 WL 7996475 (N.D. Cal. Dec. 7, 2015) .....	6
15	<i>Lipton v. Pathogenesis Corp.</i> ,	
16	284 F.3d 1027 (9th Cir. 2002) .....	17
17	<i>Marder v. Lopez</i> ,	
18	450 F.3d 445 (9th Cir. 2006) .....	5
19	<i>Matrixx Initiatives, Inc. v. Siracusano</i> ,	
20	563 U.S. 27 (2011) .....	16
21	<i>McGovney v. Aerohive Networks, Inc.</i> ,	
22	2019 WL 8137143 (N.D. Cal. Aug. 7, 2019) .....	13
23	<i>Metzler Inv. GMBH v. Corinthian Colleges, Inc.</i> ,	
24	540 F.3d 1049 (9th Cir. 2008) .....	10
25	<i>Neubronner v. Milken</i> ,	
26	6 F.3d 666 (9th Cir. 1993) .....	23
27	<i>Newton v. Merrill Lynch, Pierce, Fenner &amp; Smith, Inc.</i> ,	
28	259 F.3d 154 (3d Cir. 2001) .....	6, 20
	<i>Real Est. Exch. Inc. v. Zillow Inc.</i> ,	
	2021 WL 2352043 (W.D. Wash. June 9, 2021) .....	13
	<i>Rucker v. Cal.</i> ,	
	112 F.3d 517 (9th Cir. 1995) .....	23
	<i>Sanchez v. IXYS Corp.</i> ,	
	2018 WL 4787070 (N.D. Cal. Oct. 2, 2018) .....	15

1	<i>Santa Fe Indus., Inc. v. Green</i> ,	
2	430 U.S. 462 (1977) .....	18
3	<i>Schwab v. E*Trade Fin. Corp.</i> ,	
4	285 F. Supp. 3d 745 (S.D.N.Y. 2018) .....	18, 20, 21
5	<i>Sprewell v. Golden State Warriors</i> ,	
6	266 F.3d 979 (9th Cir. 2001) .....	10
7	<i>Stoneridge Inv. Partners, LLC v. Scientific-Atlanta</i> ,	
8	552 U.S. 148 (2008) .....	10, 23
9	<i>Tadros v. Celladon Corp.</i> ,	
10	738 F. App'x 448 (9th Cir. 2018) .....	15
11	<i>Taylor v. Westor Cap. Grp.</i> ,	
12	943 F. Supp. 2d 397 (S.D.N.Y. 2013) .....	22
13	<i>Tellabs, Inc. v. Makor Issues &amp; Rts., Ltd.</i> ,	
14	551 U.S. 308 (2007) .....	16, 19
15	<i>U.S. ex rel. Perry v. Pac. Mar. Indus. Corp.</i> ,	
16	2015 WL 4401748 (S.D. Cal. July 17, 2015) .....	22
17	<i>Webb v. SolarCity Corp.</i> ,	
18	884 F.3d 844 (9th Cir. 2018) .....	18
19	<i>Wozniak v. Align Tech., Inc.</i> ,	
20	850 F. Supp. 2d 1029 (N.D. Cal. 2012) .....	17
21	<i>Xiaojiao Lu v. Align Tech., Inc.</i> ,	
22	417 F. Supp. 3d 1266 (N.D. Cal. 2019) .....	13, 16
23	<i>Zucco Partners, LLC v. Digimarc Corp.</i> ,	
24	552 F.3d 981 (9th Cir. 2009) .....	16, 17
25	<b>STATUTES</b>	
26	15 U.S.C. § 78j(b) .....	10, 22
27	15 U.S.C. § 78u-4 .....	1, 16
28	<b>OTHER AUTHORITIES</b>	
	17 C.F.R. § 240.10b-5 .....	10, 22
	17 C.F.R. § 242.606 .....	5-6
	Disclosure of Order Execution and Routing Practices,	
	Exchange Act Release No. 34-43590, 2000 WL 1721163 (Nov. 17, 2000) .....	7

1	FINRA Rule 5310 .....	6
2	Order Execution Obligations,	
3	Exchange Act Release No. 37619A, 1996 WL 506154 (Sept. 6, 1996) .....	7
4	Payment for Order Flow,	
5	Exchange Act Release No. 34-33026, 1993 WL 403286 (Oct. 6, 1993) .....	7
6	Proposed Amendments to Rule 610 of Regulation NMS,	
7	Exchange Act Release No. 34-61902, 2010 WL 1500563 (Apr. 14, 2010) .....	7

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that on May 17, 2022, at 2:00 p.m., or as soon thereafter as this matter may be heard, in Courtroom 1, Fourth Floor, of the United States Courthouse, 1301 Clay Street, Oakland, CA 94612, before the Honorable Yvonne Gonzalez Rogers, United States District Judge, Defendants Robinhood Financial LLC (“Robinhood Financial”), Robinhood Markets, Inc. (“Robinhood Markets”), and Robinhood Securities, LLC (“Robinhood Securities”) (collectively, “Robinhood” or “Defendants”) shall and hereby do move the Court to dismiss the Second Consolidated Amended Complaint (“SAC”) filed by Lead Plaintiff Ji Kwon (“Plaintiff”) without leave to amend pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b) and the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4. Defendants’ motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities and all pleadings and papers filed in this matter and upon such other matters as may be presented to the Court at the time of hearing or otherwise.

**STATEMENT OF RELIEF SOUGHT**

Robinhood seeks an order dismissing the SAC in its entirety with prejudice.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendants submit this memorandum in support of their motion to dismiss the SAC for  
3 failure to state a claim pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b) and the  
4 PSLRA.

5 **STATEMENT OF ISSUES TO BE DECIDED**

6 Whether the SAC should be dismissed for failure to state a claim under Section 10(b) of  
7 the Securities Exchange Act of 1934.

8 **PRELIMINARY STATEMENT**

9 Plaintiff has submitted essentially the same allegations that the Court already held were  
10 insufficient to plead an actionable misstatement or omission. (Dkt. No. 91.) The handful of new  
11 paragraphs in the SAC consist of rhetoric and attorney argument but include no new *facts*: no new  
12 alleged misrepresentations and no new facts showing that any statement was false or misleading.  
13 Nor does Plaintiff make any attempt to address the fundamental deficiencies that Defendants  
14 identified with respect to the pleading of scienter and reliance. Plaintiff's claim chart – which is  
15 virtually unchanged aside from some formatting differences – leaves no doubt that Plaintiff  
16 continues to fall far short of stating a claim for securities fraud. (Dkt. No. 98.) The chart largely  
17 fails even to point to a specific statement or omission, fails to identify any factual allegations  
18 indicating that a statement was false or misleading, and fails to identify particularized factual  
19 allegations giving rise to a strong inference of scienter as to any alleged misrepresentation. Claims  
20 about unspecified “Robinhood personnel” and allusions to “internal analyses” do not satisfy Rule  
21 9(b) or the PSLRA.

22 Robinhood is a broker-dealer that offers retail customers the ability to invest, commission-  
23 free, through a self-directed trading platform.<sup>1</sup> Customers place trades through Robinhood's  
24 website or smartphone application, which are then routed to other broker-dealers, known as  
25 market makers, for execution. Robinhood receives payment from these other firms in exchange

---

26  
27 <sup>1</sup> Robinhood Markets, the parent of Robinhood Financial and Robinhood Securities, is not a  
28 broker-dealer. Robinhood Financial serves as an introducing broker while Robinhood Securities  
serves as a clearing broker. (SAC ¶ 21.)



1 for routing orders to them – a legal, regulated, and common practice throughout the investment  
2 industry known as “payment for order flow.” This suit is a misguided attempt to turn this  
3 unremarkable payment stream into a violation of the federal securities laws by alleging, despite  
4 extensive disclosures, that Robinhood failed to disclose it, and by asserting, without any  
5 particularized supporting allegations, the existence of an ill-defined “scheme.”

6 The thrust of the SAC, like the prior complaint, is that Robinhood’s order routing practices  
7 and receipt of payment for order flow violated the “duty of best execution,” which requires broker-  
8 dealers to seek the most favorable execution terms reasonably available under the circumstances.  
9 Plaintiff’s theory is that, unbeknownst to customers, Robinhood negotiated higher payment for  
10 order flow rates than other retail broker-dealers, which allegedly caused customers to receive  
11 inferior trade execution prices compared to what they might have obtained from Robinhood’s  
12 competitors. Plaintiff’s vain attempt to cram its best-execution theory into a securities fraud  
13 paradigm is the central flaw of the SAC, which should be dismissed in its entirety – this time with  
14 prejudice.

15 *First*, Plaintiff’s Rule 10b-5(b) claim should be dismissed because he does not allege any  
16 of its core elements: an actionable misstatement or omission, particularized facts giving rise to a  
17 strong inference of scienter, or reliance.

18 None of the alleged misrepresentations or omissions identified in the SAC are actionable.  
19 Robinhood’s description of its platform as commission-free is true, and Robinhood’s statement  
20 comparing its execution quality to that of other broker-dealers is not actionable because it was  
21 limited to two metrics, the veracity of which are undisputed. Plaintiff’s claim that Robinhood  
22 misrepresented its sources of revenue also is meritless because Plaintiff admits that payment for  
23 order flow was disclosed on Robinhood’s website as a source of revenue throughout the class  
24 period. Plaintiff complains only about *where* on Robinhood’s website payment for order flow was  
25 disclosed, not *whether* it was disclosed. Furthermore, Robinhood’s customer agreement has a  
26 section devoted to payment for order flow, and Plaintiff received thousands of trade confirmations  
27 stating that Robinhood could receive payment for order flow in connection with his trades. None  
28 of the alleged omissions are actionable because Robinhood did not have an independent duty to

1 disclose the information that was allegedly omitted, and Plaintiff still fails to identify any  
2 statement rendered misleading by an omission.

3 Plaintiff fails to allege particularized facts giving rise to a “strong inference” of scienter as  
4 required by the PSLRA – *i.e.*, that Defendants knowingly made false statements or acted with  
5 reckless disregard for the truth – because Robinhood’s alleged motive to obtain payment for order  
6 flow is the type of generic profit motive that is insufficient to establish scienter. Although  
7 Plaintiff alleges broadly that “senior Robinhood personnel” were aware of internal analyses  
8 showing that Robinhood’s execution quality lagged behind other brokerages, Plaintiff fails to  
9 identify those “personnel” or offer any particularized facts about the alleged analyses. Plaintiff’s  
10 allegations suggest – at worst – mismanagement, which is insufficient to state a claim for fraud.

11 Plaintiff fails to plead reliance because he does not allege that he knew of, or read, any of  
12 the allegedly false statements giving rise to this action. Significantly, despite claiming that he  
13 would have used a different brokerage had he known that Robinhood received payment for order  
14 flow, Plaintiff continued to use Robinhood’s platform after payment for order flow was  
15 specifically identified as a source of revenue in an FAQ on Robinhood’s website – the very place  
16 Plaintiff claims it should have been disclosed all along. Nor does the SAC provide any basis for  
17 the application of a presumption of reliance. The *Basic* (or “fraud-on-the-market”) presumption is  
18 inapplicable because Robinhood’s alleged failure to get the best execution price for its customers  
19 cannot have impacted the underlying price of securities traded on the public markets. The  
20 *Affiliated Ute* presumption, which applies to omissions cases, cannot be invoked here because, as  
21 Plaintiff has conceded, the “heart” of this case is an affirmative misrepresentation.

22 *Second*, Plaintiff’s claims under Rules 10b-5(a) and 10b-5(c) that Robinhood engaged in a  
23 “scheme” to mislead customers about its receipt of payment for order flow and compliance with  
24 the duty of best execution are entirely conclusory and unsupported by factual allegations  
25 evidencing the existence of the purported scheme. Plaintiff’s attempt to allege scienter and  
26 reliance in connection with this supposed scheme is also deficient for the reasons discussed above.  
27 Furthermore, the Supreme Court and Ninth Circuit have held that securities plaintiffs cannot rely  
28 on a presumption of reliance where, as here, the alleged fraudulent scheme was not disclosed to

1 the public and the claims also involve alleged misrepresentations.

## 2 **STATEMENT OF FACTS**<sup>2</sup>

### 3 **I. THE PARTIES.**

4 Robinhood offers customers the ability to invest, commission-free, in stocks, ETFs, and  
 5 options through a self-directed trading platform, both on its website and through a smartphone  
 6 application. (SAC ¶ 21.) Robinhood Financial is a registered broker-dealer with the Securities  
 7 and Exchange Commission (“SEC”). (SAC ¶ 21.) It acts as an introducing broker and has a  
 8 clearing arrangement with Robinhood Securities. (SAC ¶ 21.) When customers open accounts  
 9 with Robinhood, they enter into a customer agreement with Robinhood Financial and Robinhood  
 10 Securities. (SAC ¶ 21.) Plaintiff’s only allegation about Robinhood Markets is that it is a  
 11 Delaware corporation with its principal place of business in California. (SAC ¶ 20.)

### 12 **II. PAYMENT FOR ORDER FLOW.**

13 Rather than sending customer orders to buy or sell securities directly to national exchanges  
 14 like the New York Stock Exchange, Robinhood, like other retail broker-dealers, routes orders to  
 15 other broker-dealers (known as “principal trading firms” or “electronic market makers”) to either  
 16 execute those orders or route them to other market centers for execution. (SAC ¶ 24.) These  
 17 market makers profit from executing large volumes of retail buy and sell orders, either by taking  
 18 the other side of customer orders and exiting the positions at a profit or by routing the orders to  
 19 other market centers. (SAC ¶ 25.) To secure a guaranteed supply of liquidity in their markets,  
 20 market makers offer payments to retail broker-dealers in exchange for the retail firms routing their  
 21 customers’ orders to the market makers. (SAC ¶¶ 26-27.) These payments are known as  
 22 “payment for order flow” or “PFOF.” (SAC ¶ 27.) SEC rules expressly permit the receipt of such

---

23  
 24 <sup>2</sup> Allegations from the SAC are assumed to be true for purposes of this motion, except where  
 25 those allegations contradict the contents of regulatory filings and other documents cited in the  
 26 SAC. *See Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) (“The court may treat . . . a  
 27 document [referenced in the complaint] as part of the complaint, and thus may assume that its  
 28 contents are true for purposes of a motion to dismiss under Rule 12(b)(6).”). As discussed further  
 in the Request for Judicial Notice, Defendants request that the Court take judicial notice of the  
 documents attached as exhibits to the accompanying Declaration of Brandon Fetzer, which are  
 referred to herein as “Exs. A-T.”

1 payments as long as they are disclosed in quarterly reports filed pursuant to 17 C.F.R. § 242.606  
 2 (“Rule 606”). (SAC ¶ 29.)<sup>3</sup> There is no allegation that Robinhood failed to fully and accurately  
 3 report its PFOF in its Rule 606 filings, which Plaintiff acknowledges are posted on Robinhood’s  
 4 website. (SAC ¶ 72.)

5 Principal trading firms may also offer retail broker-dealers “price improvement” on  
 6 customer executions in exchange for routing customer orders to them. (SAC ¶ 30.) Price  
 7 improvement occurs when a customer order executes at a price that is superior to the best available  
 8 quotation then appearing on the public quotation feed, known as the National Best Bid and Offer  
 9 (“NBBO”). (SAC ¶¶ 30-31.) In these circumstances, the principal trading firm executes a buy  
 10 order at a price lower than the lowest prevailing offer or executes a sell order at a price higher than  
 11 the highest prevailing bid. (SAC ¶ 30.)

### 12 **III. THE DUTY OF BEST EXECUTION.**

13 A broker-dealer has a duty to seek to obtain best execution of customer orders at the most  
 14 favorable terms reasonably available under the circumstances. *See Newton v. Merrill Lynch,*  
 15 *Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 173 (3d Cir. 2001). In other words, the duty “requires  
 16 brokers to use reasonable diligence to ascertain the trading venue that will secure the most  
 17 favorable price possible for the customer.” *Lim v. Charles Schwab & Co., Inc.*, 2015 WL  
 18 7996475, at \*1 (N.D. Cal. Dec. 7, 2015), *aff’d sub nom. Fleming v. Charles Schwab Corp.*, 878  
 19 F.3d 1146 (9th Cir. 2017). Determining what prices are reasonably available “in any particular  
 20 situation may require a factual inquiry into all of the surrounding circumstances.” *Newton*, 259  
 21 F.3d at 187 (internal quotations omitted). FINRA Rule 5310 directs broker-dealers to consider  
 22 multiple factors, including the “character of the market for the security” and the “size and type of  
 23

---

24 <sup>3</sup> Rule 606 of Regulation NMS requires broker-dealers to make publicly available quarterly  
 25 reports that disclose, among other things, “the identity of the top ten venues to which they routed  
 26 orders for execution and the material aspects of their relationship with each of those venues,  
 27 including any arrangement for payment for order flow or profit sharing.” Sec. & Exch. Comm’n,  
 28 Div. of Trading & Markets, *Certain Issues Affecting Customers in the Current Equity Market*  
*Structure* (Jan. 26, 2016), at 8. Its counterpart, Rule 607 of Regulation NMS, requires broker-  
 dealers to make certain disclosures to customers upon the opening of a new account and annually  
 thereafter, including their policies about PFOF. *See id.*

1 transaction.”

2 A broker-dealer is required to evaluate the quality of executions it obtains for its  
3 customers’ orders, consider the best reasonably available terms from competing market centers,  
4 and where material differences exist between the price improvement opportunities offered by  
5 market centers, take those differences into account in deciding where to route orders.<sup>4</sup> At the same  
6 time, brokers are not held “to an absolute requirement of achieving the most favorable price” on  
7 an order or to achieve a certain level of execution quality,<sup>5</sup> nor are they required to match the  
8 execution quality metrics of other broker-dealers. Importantly, “a broker-dealer does not violate  
9 its best execution obligation solely because it receives payment for order flow.”<sup>6</sup>

#### 10 **IV. ROBINHOOD’S COMPLIANCE WITH THE DUTY OF BEST EXECUTION.**

11 Robinhood initially relied on another broker-dealer to provide both clearing and order  
12 execution, but started routing customer orders directly to principal trading firms in the first half of  
13 2016. (SAC ¶¶ 55-56.) Robinhood allegedly negotiated a PFOF rate with these trading firms that  
14 was higher than the rate the firms paid to other retail brokerages. (SAC ¶¶ 57-60.) After allegedly  
15 being informed that PFOF might result in less price improvement for customers, Robinhood  
16 formed a “Best Execution Committee” to monitor the speed and the prices at which the principal  
17 trading firms were executing Robinhood customer orders. (SAC ¶ 64.) That committee then met  
18 at least once per month. (SAC ¶ 64.)

19 In 2017, after the committee allegedly first observed that Robinhood was not obtaining  
20 much price improvement on its customer orders in equity securities, Robinhood developed a  
21 proprietary routing algorithm, known as a smart order router, designed to make the principal  
22

---

23 <sup>4</sup> Order Execution Obligations, Exchange Act Release No. 37619A, 1996 WL 506154, at  
24 \*51-53 (Sept. 6, 1996).

25 <sup>5</sup> See Payment for Order Flow, Exchange Act Release No. 34-33026, 1993 WL 403286, at  
26 \*4 (Oct. 6, 1993) (internal citation and quotation marks omitted).

27 <sup>6</sup> Disclosure of Order Execution and Routing Practices, Exchange Act Release No. 34-  
28 43590, 2000 WL 1721163, at \*12 (Nov. 17, 2000); *see also* Proposed Amendments to Rule 610 of  
Regulation NMS, Exchange Act Release No. 34-61902, 2010 WL 1500563, at \*16 (Apr. 14,  
2010) (noting that PFOF is “not necessarily inconsistent with a broker’s duty of best execution, so  
long as appropriate measures are taken to ensure that that duty is, in fact, met”).

1 trading firms with which Robinhood had payment for order flow arrangements compete for order  
 2 flow by routing customer orders to the principal trading firm that had provided the most price  
 3 improvement for that stock over the prior 30 days. (SAC ¶ 66.) In October 2018, unspecified  
 4 “Robinhood personnel” began reviewing Robinhood’s order execution quality compared to that of  
 5 its competitors. (SAC ¶ 72.) By March 2019, upon learning that its execution quality was  
 6 allegedly not on par with its competitors, Robinhood conducted an extensive internal analysis to  
 7 identify the source of such discrepancies. (SAC ¶ 73.)

8 **V. ROBINHOOD’S STATEMENTS ABOUT PAYMENT FOR ORDER FLOW AND**  
 9 **EXECUTION QUALITY.**

10 **A. Payment for Order Flow.**

11 Robinhood consistently disclosed its receipt of PFOF on its website. In 2014, before its  
 12 launch, Robinhood published an FAQ that disclosed that it anticipated receiving PFOF in response  
 13 to the question, “How does Robinhood make money?” (SAC ¶ 47.) In December 2014, the  
 14 reference to PFOF was moved to a new FAQ, which was deleted sometime in 2016. (SAC ¶ 75.)  
 15 In October 2018, PFOF was again added to the list of revenue sources appearing on the “How  
 16 Robinhood Makes Money” FAQ. (SAC ¶ 86.) Throughout this time, Robinhood disclosed its  
 17 receipt of PFOF in its Rule 606 reports, which were published on its website and specifically listed  
 18 the venues to which Robinhood routed orders and the payments Robinhood received in return.  
 19 (SAC ¶ 83.) For example, Robinhood Financial’s Q1 2018 Rule 606 report disclosed that  
 20 “Robinhood received payment from Wolverine Securities, LLC for directing order flow to this  
 21 venue” and that the payments “averaged less than \$0.00026 per dollar of executed trade value.”  
 22 (Ex. A at 3.)

23 In addition to its website, Robinhood disclosed its receipt of PFOF in its customer  
 24 agreements and trade confirmations. (SAC ¶ 85.) Robinhood’s customer agreements have always  
 25 included a paragraph titled “Equity Orders and Payment for Order Flow,” which disclosed PFOF  
 26 as a potential source of revenue. (*Id.*) In relevant part, this paragraph stated:

27 ‘Payment for order flow’ includes, among other things, any monetary payment,  
 28 service, property, or other benefit that results in remuneration, compensation, or  
 consideration to a broker-dealer from any broker-dealer in return for directing

orders. [Robinhood] transmit[s] customer orders for execution to various exchanges or market centers based on a number of factors . . . [that] are designed to result in favorable transaction processing for customers. The nature and source of any payments and/or credits received by [Robinhood] in connection with any specific transactions will be furnished upon written request.

(Ex. B § 24.)

Furthermore, since Robinhood's inception, trade confirmations sent to customers have disclosed Robinhood's receipt of PFOF. From the beginning of the class period through November 2018, Robinhood utilized Apex Clearing Corporation ("Apex") as its clearing broker and the Apex trade confirmations stated:

Apex receives remuneration for directing orders to particular broker/dealers or market centers for execution. Such remuneration is considered compensation to the firm. The source and nature in connection with your transaction may be disclosed upon written request. Your Introducing Broker, that clears trades through Apex, may share in such payments or may directly receive payment for order flow for certain transactions. Details may be furnished upon written request.

(Ex. C.) From November 2018 (when Robinhood began self-clearing) through the end of the class period, Robinhood's trade confirmations stated:

RHS may receive remuneration for directing orders to particular broker-dealers or market centers for execution. Such remuneration is considered compensation to the firm. The source and nature in connection with your transactions are available upon written request. RHF, when clearing through RHS, may share i[n] such payments or may directly receive payment for order flow for certain transactions. Details are available upon written request.

(Ex. D.)

Robinhood's receipt of PFOF as a source of revenue was repeatedly referenced in numerous publications since its founding, including in *The New York Times* and CNBC. A few examples include:

- "In addition to cash balances, the company makes money from 'payment for order flow,' which refers to the money it receives for selling its orders to market makers to be executed" (Ex. E);
- "Among competitors, Robinhood offers a unique business model. The company gives away free trades of both stocks and cryptocurrencies to its customers, taking a loss on transaction fees. The app then collects interest on escrowed cash and sells trades to market makers" (Ex. F); and
- "The company generates revenue by taking a tiny fraction of a cent per dollar from each trade order as well as collecting interest on customer deposits" (Ex. G).



### B. Execution Quality.

In October 2018, Robinhood added an FAQ to its website concerning its order execution quality. Under the heading, “What is the execution quality for orders on Robinhood,” the FAQ stated:

Reg NMS ensures your order gets executed at the national best bid and offer, or better, at the time of execution. Our execution quality and speed matches or beats what's found at other major brokerages. Even when measured at the time of routing, our customers' orders get executed at the NBBO or better. By way of example, in August 2018, 99.12% of our customers' marketable orders were executed at the the [sic] national best bid and offer or better with an execution speed of 0.08 seconds from routing to execution (for S&P 500 stocks, during market hours).

(SAC ¶ 87.) This statement was removed from the website in June 2019. (SAC ¶ 94.)

## ARGUMENT

**I. PLAINTIFF FAILS TO STATE A CLAIM UNDER SECTION 10(b) AND RULE 10b-5(b).**

Plaintiff's Section 10(b) and Rule 10b-5(b) claim should be dismissed because he fails to plead with particularity (i) an actionable misstatement or omission, (ii) facts giving rise to a strong inference of scienter, and (iii) reliance. *See Stoneridge Inv. Partners, LLC v. Scientific-Atlanta*, 552 U.S. 148, 157 (2008); 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5(b).

Rule 9(b) and the PSLRA impose “heightened pleading requirements” that securities fraud plaintiffs must meet to survive a motion to dismiss. *In re Rigel Pharms., Inc. Sec. Litig.*, 697 F.3d 869, 876 (9th Cir. 2012). Under the PSLRA, Plaintiff must plead “particularized allegations of the circumstances constituting fraud,” and “additional specific pleading requirements, including [those] requiring plaintiffs to state with particularity both the facts constituting the alleged violation and the facts evidencing scienter.” *Id.* As this Court has recognized, these requirements are “‘formidable’ for a plaintiff seeking to state a proper claim and avoid dismissal.” *In re Twitter, Inc. Sec. Litig.*, 506 F. Supp. 3d 867, 879 (N.D. Cal. 2020) (quoting *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1055 (9th Cir. 2008)).

The Court “need not . . . accept as true allegations that contradict matters properly subject to judicial notice or by exhibit.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “Nor is the court required to accept as true allegations that are merely conclusory,



1 unwarranted deductions of fact, or unreasonable inferences.” *Id.*

2 **A. Plaintiff Fails to Plead an Actionable Misstatement or Omission.**

3 With respect to the prior complaint, the Court correctly concluded that Plaintiff “either  
4 failed to point to an actionable omission or misrepresentation or failed to sufficiently allege that  
5 the misrepresentations or omissions were false or misleading,” and Plaintiff alleges nothing new in  
6 the SAC that would warrant a different result. (Dkt. No. 91.) As Plaintiff’s redline makes clear,  
7 the allegations in the SAC are largely unchanged from the prior iteration and, in particular, contain  
8 no new alleged misrepresentations or facts demonstrating that any statement was false or  
9 misleading. Plaintiff’s claim chart confirms that point, as it is also virtually unchanged.

10 As an initial matter, to the extent Plaintiff’s claims are based on instructions allegedly  
11 given to customer service representatives about Robinhood’s receipt of PFOF and the alleged  
12 contents of certain training materials (SAC ¶¶ 81-82), the Court already stated that those  
13 allegations are too “generic” to support a securities fraud claim. (Feb. 15, 2022 Hr’g Tr. at 17-18.)  
14 Plaintiff does not add any specifics in the SAC. The Court also already rejected Plaintiff’s  
15 reliance on the FAQ stating that Robinhood’s receipt of PFOF was “negligible” and “indirect”  
16 because it occurred prior to the start of the class period. (*Id.* at 11:14-16.)

17 **1. Robinhood Did Not Misrepresent the Commission-Free Nature of Its**  
18 **Trading Platform.**

19 Plaintiff’s Rule 10b-5(b) claim is again premised on the untenable assertion that  
20 Robinhood did not live up to its promise to provide commission-free trading. (SAC ¶ 6.)  
21 Robinhood’s description of its trading platform as commission-free is not false or misleading  
22 because Robinhood does not charge commissions. Plaintiff’s conclusory assertion that receipt of  
23 PFOF constituted a “backdoor commission” makes no sense. (SAC ¶ 110.) Within the broker-  
24 dealer industry, a commission is a fee paid by the customer to the broker simply to accept the  
25 order. Unlike other brokerages, which have historically charged a commission of \$5 or more per  
26 order *and* received PFOF, Robinhood has never charged customers commissions to place orders  
27 on its platform. (SAC ¶ 91.) Indeed, Plaintiff does not – and cannot – allege that he was charged  
28 a commission to place any trades through Robinhood. Furthermore, PFOF does not constitute a

1 commission because it is paid by principal trading firms – not customers – in exchange for  
 2 Robinhood’s agreement to route orders to those firms. (SAC ¶ 28.)

3 **2. Robinhood’s Limited Comparison of Two Execution Quality Metrics to**  
 4 **Other Brokerages Was Not False or Misleading.**

5 The statement in the FAQ comparing Robinhood’s execution quality to other brokerages  
 6 was not false or misleading because the comparison was limited to the specific metrics discussed,  
 7 and the SAC again lacks any allegations suggesting that Robinhood did not compare favorably to  
 8 other brokerages with respect to those metrics. *See Bodri v. GoPro, Inc.*, 252 F. Supp. 3d 912,  
 9 924 (N.D. Cal. 2017) (“A statement is misleading only if a reasonable investor, reading the  
 10 statement fairly and in context, would be misled.”).

11 In an FAQ that Plaintiff alleges was present on Robinhood’s website from October 2018 to  
 12 June 2019, under the heading, “What is the execution quality for orders on Robinhood,”  
 13 Robinhood stated:

14 Reg NMS ensures your order gets executed at the national best bid and offer, or  
 15 better, at the time of execution. Our execution quality and speed matches or beats  
 16 what’s found at other major brokerages. Even when measured at the time of  
 17 routing, our customers’ orders get executed at the NBBO or better. By way of  
 18 example, in August 2018, 99.12% of our customers’ marketable orders were  
 executed at the the [sic] national best bid and offer or better with an execution  
 speed of 0.08 seconds from routing to execution (for S&P 500 stocks, during  
 market hours).

19 (SAC ¶ 87.) This statement says nothing about the amount of price improvement received by  
 20 customers, and its reference to “execution quality and speed” cannot reasonably be read to extend  
 21 beyond what is explicitly described: the percentage of orders executed at or above NBBO and the  
 22 time from “routing to execution” of orders. The Court directly asked Plaintiff’s counsel, “If I find  
 23 . . . that there is nothing in that statement that addresses [the] issue of price improvement, can you  
 24 amend?” (Feb. 15, 2022 Hr’g Tr. at 7:7-9.) Although Plaintiff’s counsel responded in the  
 25 affirmative, Plaintiff again fails to allege any statement by Robinhood about price  
 26 improvement. (*Id.* at 7:10-12.)

1                   **3. Robinhood Repeatedly Disclosed Its Receipt of Payment for Order**  
 2                   **Flow as a Revenue Source.**

3           To the extent Plaintiff's claims are based on the alleged failure to disclose the receipt of  
 4 PFOF in the FAQ describing Robinhood's sources of revenue, such failure cannot serve as the  
 5 basis for Plaintiff's Section 10(b) claim. As a threshold matter, the receipt of PFOF does not  
 6 constitute a violation of the duty of best execution and therefore is disconnected from Plaintiff's  
 7 alleged economic loss. Furthermore, as Plaintiff concedes, Robinhood disclosed its receipt of  
 8 PFOF through various means, including on other parts of its website, in its customer agreement,  
 9 and in each trade confirmation sent to customers. *See McGovney v. Aerohive Networks, Inc.*, 2019  
 10 WL 8137143, at \*11 (N.D. Cal. Aug. 7, 2019) (dismissing Section 10(b) claim because the  
 11 defendant "disclosed exactly" what the plaintiff alleged it had omitted). Robinhood's receipt of  
 12 PFOF was also widely reported by various mainstream news sources.

13           *First*, Robinhood disclosed PFOF as a source of revenue on its website. From December  
 14 2014 to 2016 and again from September or October 2018 to present, PFOF was listed in an FAQ  
 15 concerning Robinhood's sources of revenue. (SAC ¶¶ 51-52, 75, 86.) Plaintiff also admits that  
 16 throughout the class period, Robinhood's receipt of PFOF was disclosed in Rule 606 reports –  
 17 posted on Robinhood's website – which specifically identified the principal trading firms to which  
 18 Robinhood routed orders and the PFOF Robinhood received in return. (SAC ¶ 83.) For example,  
 19 for the first quarter of 2018, Robinhood identified Apex Clearing Corporation, Citadel Execution  
 20 Services, Two Sigma Securities, LLC, and Wolverine Securities, LLC as entities to which it  
 21 routed orders, and for the latter three disclosed that "[p]ayments received averaged less than  
 22 \$0.00026 per dollar of executed trade value for order flow." (Ex. A at 3.)

23           The fact that these disclosures were made on a different part of Robinhood's website is of  
 24 no moment because Robinhood's website is properly viewed as a whole. *See Real Est. Exch. Inc.*  
 25 *v. Zillow Inc.*, 2021 WL 2352043, at \*7 (W.D. Wash. June 9, 2021) (finding that defendant's  
 26 website, "viewed as a whole rather than the websites' individual parts," was unlikely to mislead);  
 27 *Xiaojiao Lu v. Align Tech., Inc.*, 417 F. Supp. 3d 1266, 1276 (N.D. Cal. 2019) (plaintiffs cannot  
 28 cherry-pick or ignore portions of statements "viewed properly as a whole").

1        *Second*, Robinhood’s customer agreement and trade confirmations disclosed the receipt of  
 2 PFOF. (SAC ¶ 85.) From inception, Robinhood’s customer agreement has included a section  
 3 devoted to PFOF – “Equity Orders and Payment for Order Flow” – that allowed customers to seek  
 4 information about “the nature and source of any payments and/or credits” received by Robinhood  
 5 in connection with its order routing practices. (Ex. B.) Trade confirmations sent to customers also  
 6 disclosed PFOF. From November 2015 to November 2018, the trade confirmations sent to  
 7 customers by Apex, which cleared trades on behalf of Robinhood, stated that Apex “receives  
 8 remuneration for directing orders to particular broker/dealers or market centers for execution” and  
 9 that Robinhood Financial “may share in such payments or may directly receive payment for order  
 10 flow.” (Ex. C.) Since December 2018, trade confirmations have included similar language, but  
 11 substituted Robinhood Securities for Apex. (Ex. D.)

12        *Third*, numerous publications have confirmed Robinhood’s receipt of PFOF since at least  
 13 2013. For example, in December 2013, *TechCrunch*, a leading technology start-up media outlet  
 14 stated: “Robinhood will also earn money from what’s called ‘payment for order flow.’  
 15 Essentially, stock exchanges want lots of stock trading volume so people can always find a buyer  
 16 or seller, so they’re willing to pay a little to get trades executed on their exchange versus another.”  
 17 (Ex. H.) Similarly, in a February 2014 interview with CNBC, one of Robinhood’s founders stated  
 18 that “Robinhood has several monetization revenue streams on day one. Those include margin  
 19 lending, payment for order flow, and interest on cash balances.”<sup>7</sup> Around that same time,  
 20 *TechCrunch* again noted that Robinhood planned to receive “payment for order flow where stock  
 21 exchanges pay the startup to bring its trading volume to their marketplaces.” (Ex. I.) Press  
 22 coverage continued through 2014 and 2015. (*See, e.g.*, Exs. J-K.) And in April 2016, an article  
 23 quoted one of Robinhood’s founders as saying that Robinhood “receive[s] a small amount per  
 24 trade from security dealers who buy and sell stocks – known as market makers – to bring  
 25 customers together.” (Ex. L.) In February 2017, in connection with an interview with the  
 26

---

27        <sup>7</sup> *Buy Stocks with \$0 Commission*, CNBC (Feb. 27, 2014),  
 28 <https://www.cnbc.com/video/2014/02/27/buy-stocks-with-0-commission.html>.

1 founders, *The New York Times* noted that, “[i]n addition to cash balances, [Robinhood] makes  
 2 money from ‘payment for order flow,’ which refers to the money it receives for selling its orders  
 3 to market makers to be executed.” (Ex. E.) Robinhood’s founders continued to discuss PFOF  
 4 with various media outlets throughout the spring of 2017, and articles in *The Wall Street Journal*,  
 5 the *San Francisco Business Times*, *TechCrunch*, and *Reuters* (among many others) published  
 6 around that time explicitly mention PFOF as a source of Robinhood’s revenue. (Exs. M-P.)

7 Media reports referring to Robinhood’s receipt of PFOF continued throughout 2018,  
 8 including articles in *The Wall Street Journal* and *Business Insider*. These articles described PFOF  
 9 as “selling client trades to market makers” (Ex. Q) and “selling order flow to stock exchanges  
 10 looking to secure more liquidity for their traders,” (Ex. R) and identified PFOF as one of  
 11 Robinhood’s “three main monetization streams” (Ex. S) and “[i]ts other main way of pulling in  
 12 cash” (Ex. T).

13 The law is clear that publicly available information “cannot be a material omission under  
 14 federal securities laws.” *Sanchez v. IXYS Corp.*, 2018 WL 4787070, at \*3 (N.D. Cal. Oct. 2, 2018)  
 15 (dismissing Section 10(b) claim because the analyst reports serving as basis for claim were  
 16 publicly available on Bloomberg and thus “already included in the total mix of information  
 17 considered by shareholders”); *see also Heliotrope Gen., Inc. v. Ford Motor Co.*, 189 F.3d 971,  
 18 980-81 (9th Cir. 1999) (no duty to disclose information “that the market was aware of” from news  
 19 articles); *Tadros v. Celladon Corp.*, 738 F. App’x 448, 448-49 (9th Cir. 2018) (rejecting omission  
 20 claim where omitted facts were disclosed “in a publicly accessible journal article”); *In re Kalobios*  
 21 *Pharms., Inc. Sec. Litig.*, 258 F. Supp. 3d 999, 1004, 1009-10 (N.D. Cal. 2017) (dismissing  
 22 Section 10(b) claim where the allegedly omitted facts were reported by “credible and mainstream  
 23 sources like the New York Times, Forbes and Newsweek”).

#### 24 **4. The Alleged Omission of Information Regarding Robinhood’s “Unique** 25 **Business Model” Is Not Actionable.**

26 To the extent Plaintiff’s claims are premised on Robinhood’s alleged failure to “disclose its  
 27 unique business model of charging significantly higher PFOF than other brokers,” as Plaintiff’s  
 28 claim chart suggests, such an omission is not actionable because Robinhood did not have a duty to

1 disclose that information. (Dkt. No. 98 at 1.) Under the federal securities laws, omissions “are  
 2 actionable only where they make . . . actual statements misleading; it is not sufficient that an  
 3 investor merely considered the omitted information significant.” *In re Twitter*, 506 F. Supp. 3d at  
 4 880 (internal quotations omitted); *see also Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 44-  
 5 45 (2011) (Section 10(b) and Rule 10b-5(b) “do not create an affirmative duty to disclose any and  
 6 all material information.”); *Basic Inc. v. Levinson*, 485 U.S. 224, 239 n.17 (1988) (“Silence, absent  
 7 a duty to disclose, is not misleading under Rule 10b-5.”). Nor does a true statement become  
 8 “actionable merely because it is incomplete.” *In re Twitter*, 506 F. Supp. 3d at 880. Plaintiff does  
 9 not contend that Robinhood failed to comply with its disclosure obligations under SEC Rule 606.  
 10 Nor does Plaintiff identify any statement that is rendered misleading by the omission of  
 11 information regarding the amount of PFOF received compared to other broker-dealers or the  
 12 alleged ratio of PFOF to price improvement.

13 **B. Plaintiff Fails to Plead Scienter.**

14 Plaintiff made no changes to its scienter allegations, which still fall far short of the  
 15 PSLRA’s requirement that he “state with particularity facts giving rise to a strong inference that  
 16 the defendant acted with the required state of mind,” 15 U.S.C. § 78u-4(b)(2)(A) – *i.e.*, that  
 17 Defendants “made false or misleading statements either intentionally or with deliberate  
 18 recklessness.” *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 991 (9th Cir. 2009)  
 19 (internal quotations omitted). To qualify as “strong,” the inference of scienter “must be more than  
 20 merely plausible or reasonable – it must be cogent and at least as compelling as any opposing  
 21 inference of nonfraudulent intent.” *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 314  
 22 (2007). Courts are directed to engage in a comparative analysis and “must consider, not only  
 23 inferences urged by the plaintiff . . . but also competing inferences rationally drawn from the facts  
 24 alleged.” *Id.*

25 To plead scienter, therefore, “the complaint must contain allegations of specific  
 26 contemporaneous statements or conditions that demonstrate the intentional or the deliberately  
 27 reckless false or misleading nature of the statements when made.” *Xiaojiao Lu*, 417 F. Supp. 3d at  
 28 1279 (internal quotations omitted). Pleading “deliberate recklessness” requires specific factual

1 allegations showing “a highly unreasonable omission, involving . . . an extreme departure from the  
 2 standards of ordinary care, and which presents a danger of misleading buyers or sellers that is  
 3 either known to the defendant or is so obvious that the actor must have been aware of it.” *Zucco*  
 4 *Partners*, 552 F.3d at 991.

### 5 **1. Plaintiff’s Generalized Allegations Are Insufficient.**

6 Plaintiff’s allegations pertaining to scienter are conclusory and fall far short of meeting the  
 7 PSLRA’s heightened pleading standard. Plaintiff’s attempt to establish scienter based on the  
 8 assertion that “senior Robinhood personnel” and “senior management” were allegedly aware of  
 9 certain internal analyses suggesting that Robinhood’s execution quality lagged behind other  
 10 brokerages is insufficient to avoid dismissal because the SAC fails to identify the personnel at  
 11 issue or anything at all about these purported analyses. (SAC ¶¶ 73, 88, 90, 142, 144.) *See*  
 12 *Jackson v. Abernathy*, 960 F.3d 94, 99 (2d Cir. 2020) (generalized allegations about warnings  
 13 made to “unidentified senior executives” are not “sufficiently particularized to raise a strong  
 14 inference of scienter against any individual, must less one whose knowledge may be imputed” to  
 15 the company); *Kaplan v. Charlier*, 426 F. App’x 547, 549 (9th Cir. 2011) (general allegation that  
 16 “management knew about the problems” insufficient to state a claim because complaint lacked  
 17 “any facts to back up this conclusory statement”); *Lipton v. Pathogenesis Corp.*, 284 F.3d 1027,  
 18 1035-36 (9th Cir. 2002) (dismissing claim where plaintiffs failed to state the source of information  
 19 regarding the reports, how they learned of them, who drafted them, or which officers received  
 20 them); *In re Twitter*, 506 F. Supp. 3d at 888 (allegations concerning “daily summaries” and  
 21 “periodic reviews of key metrics” insufficient to draw strong inference of scienter because the  
 22 complaint did not “describe with particularity the specific contents” of those materials); *Wozniak v.*  
 23 *Align Tech., Inc.*, 850 F. Supp. 2d 1029, 1042 (N.D. Cal. 2012) (concluding that the complaint  
 24 failed to allege scienter because “[a]lthough plaintiff refer[red] to the existence of sales and  
 25 shipment data and ma[de] a general assertion about what the data showed, plaintiff allege[d] no  
 26 hard numbers or other specific information”).

27 Plaintiff’s allegations about Robinhood’s alleged failure to disclose its receipt of payment  
 28 for order flow and the allegedly higher-than-normal rate of such payments similarly do not



1 establish a strong inference of scienter. As a starting point, Plaintiff's claim that Robinhood  
 2 intentionally or recklessly failed to disclose its receipt of PFOF makes no sense in light of the  
 3 varied ways in which Robinhood's receipt of PFOF was disclosed, precluding any inference of  
 4 scienter. It is also legally insufficient because the "pursuit of PFOF is the type of generic profit  
 5 motive that is insufficient to establish scienter," *Schwab v. E\*Trade Fin. Corp.*, 285 F. Supp. 3d  
 6 745, 758 (S.D.N.Y. 2018), *aff'd*, 752 F. App'x 56 (2d Cir. 2018), and Plaintiff appears to be  
 7 asking for an inference of scienter from the mere fact of an alleged omission, which does not  
 8 satisfy the PSLRA.

9 Furthermore, the receipt of higher PFOF rates than other brokerages does not support an  
 10 inference of scienter with regard to execution quality because PFOF does not cause poor execution  
 11 quality. (SAC ¶¶ 58-60.) Order execution is not merely a dynamic between the customer (who  
 12 receives price improvement) and the broker-dealer (who receives PFOF). Market makers also  
 13 play a critical role in the process. Robinhood receiving less PFOF would not necessarily mean  
 14 greater price improvement for customers because the market maker could simply choose to keep  
 15 that additional portion of the spread as profit for itself. (See SAC ¶ 68 (alleging only that "high  
 16 payment for order flow rates *could* lead to less price improvement") (emphasis added).)

17 Robinhood's alleged failure to conduct regular and rigorous reviews of its compliance with  
 18 the duty of best execution also is insufficient to establish a strong inference of scienter because  
 19 those alleged failures suggest at most corporate mismanagement, not fraud. *Santa Fe Indus., Inc.*  
 20 *v. Green*, 430 U.S. 462, 479 (1977) ("Congress by § 10(b) did not seek to regulate transactions  
 21 which constitute no more than internal corporate mismanagement."); *Webb v. SolarCity Corp.*,  
 22 884 F.3d 844, 856 (9th Cir. 2018) (scienter not adequately pleaded where plaintiff's allegations, at  
 23 best, "paint a picture of a mismanaged organization in need of closer financial oversight"); *Jui-*  
 24 *Yang Hong v. Extreme Networks, Inc.*, 2017 WL 1508991, at \*20 (N.D. Cal. Apr. 27, 2017)  
 25 (allegation that alleged wrongdoing had a "negative impact on customers" was "insufficient to  
 26 establish scienter" where it "more properly sounds in corporate mismanagement").  
 27  
 28



1                               **2.       The Opposing Inference of Nonfraudulent Intent Is Far More**  
 2                               **Compelling.**

3               Not only do Plaintiff's allegations fail to give rise to an inference of scienter that is  
 4 "cogent" and "compelling," but the "opposing inference of nonfraudulent intent" is far more  
 5 compelling. *Tellabs*, 551 U.S. at 314. Plaintiff's allegations indicate that Robinhood worked over  
 6 the course of the putative class period to monitor, analyze, and improve the execution quality of its  
 7 customers' orders.

8               At the start of the putative class period, after allegedly being informed that PFOF might  
 9 result in less price improvement for customers, Robinhood formed a "Best Execution Committee"  
 10 to monitor the speed and the prices at which the principal trading firms were executing Robinhood  
 11 customer orders. (SAC ¶ 64.) That committee then met "at least once per month." (SAC ¶ 64.)  
 12 In 2017, after the committee allegedly first observed that Robinhood "was not obtaining much  
 13 price improvement on its customer orders in equity securities," Robinhood "developed a  
 14 proprietary routing algorithm, known as a smart order router, designed to make the principal  
 15 trading firms with which Robinhood had payment for order flow arrangements compete for order  
 16 flow by *routing customer orders to the principal trading firm that had provided the most price*  
 17 *improvement* for that stock over the prior 30 days." (SAC ¶ 56 (emphasis added).) In October  
 18 2018, "Robinhood personnel" began reviewing Robinhood's order execution quality compared to  
 19 that of its competitors. (SAC ¶ 72.) By March 2019, upon learning that its execution quality was  
 20 allegedly not on par with its competitors, Robinhood conducted an "extensive internal analysis" to  
 21 identify the source of such discrepancies. (SAC ¶ 73.) Far from suggesting fraud, these  
 22 allegations portray a growing company making good-faith efforts to monitor and improve  
 23 execution of trade orders.

24                               **C.       Plaintiff Fails to Plead Reliance.**

25               Unlike traditional securities fraud cases where plaintiffs may rest on a presumption that  
 26 they relied on false or misleading statements under the fraud-on-the-market theory (also known as  
 27 the *Basic* presumption) or *Affiliated Ute* (available in certain omissions cases), Plaintiff cannot  
 28

1 rely on either presumption to establish reliance here. He must affirmatively allege that he read and  
2 relied on the statements allegedly giving rise to this action, which he fails to do.

3 Plaintiff cannot invoke the *Basic* presumption of reliance because he cannot plausibly  
4 allege that any purported misrepresentation by Robinhood about its receipt of PFOF or execution  
5 quality impacted the market price of any security. *See Newton*, 259 F.3d at 175 (holding that the  
6 *Basic* presumption is “inappropriate” in a best execution case because the claims “do not involve  
7 an omission or misrepresentation that affected the value of a security in an efficient market”);  
8 *Schwab*, 285 F. Supp. 3d at 753 (explaining that the fraud-on-the-market presumption applies  
9 “where the plaintiff transacted in the stock of a company that made material misrepresentations to  
10 the public and whose stock is traded on an efficient market”). No court has ever applied the *Basic*  
11 presumption in a best execution case.

12 As the Supreme Court has explained, the *Basic* presumption “is premised on the theory  
13 that investors rely on the market price of a company’s security, which in an efficient market  
14 incorporates all of the company’s public misrepresentations.” *Goldman Sachs Grp., Inc. v. Ark.*  
15 *Tchr. Ret. Sys.*, 141 S. Ct. 1951, 1957 (2021) (citing *Basic*). The application of this presumption  
16 to a typical securities fraud lawsuit is straightforward: if a company makes a materially false or  
17 misleading public statement about its business and its stock trades in an efficient market, a  
18 misstatement is presumed to impact its stock price. But the *Basic* presumption has no application  
19 in a best execution case, where an alleged misrepresentation by a broker-dealer about its execution  
20 quality contains no information about any public company and therefore could not possibly impact  
21 any company’s stock price. Indeed, the idea that Robinhood’s statement about its “execution  
22 quality and speed” could impact the stock price of any public corporation – much less the price of  
23 all stocks traded on Robinhood’s platform – is absurd on its face.

24 Further, Plaintiff cannot invoke the presumption of reliance created by *Affiliated Ute*  
25 because he “allege[s] both misstatements and omissions” and the case cannot be characterized as  
26 “one that primarily alleges omissions.” *Binder v. Gillespie*, 184 F.3d 1059, 1064 (9th Cir. 1999);  
27 *see also Crago v. Charles Schwab & Co.*, 2021 WL 4990234, at \*3-5 (N.D. Cal. Oct. 27, 2021)  
28 (rejecting application of *Affiliated Ute* presumption in best execution case because the plaintiff did

not primarily allege omissions); *George v. Cal. Infrastructure & Econ. Dev. Bank*, 2010 WL 2383520, at \*6 (E.D. Cal. June 10, 2010) (declining to apply *Affiliated Ute* presumption in case alleging both “affirmative misrepresentations and omissions”). Indeed, Plaintiff has explicitly stated that Robinhood’s alleged misstatement regarding “execution quality and speed” is the “fundamental deception at the heart of this lawsuit,” and Plaintiff’s claim chart consists predominantly of alleged misstatements. (Dkt. No. 72 at 18; Dkt. No. 98.) Furthermore, Robinhood’s supposed failure to disclose the alleged falsity of its representations about execution quality and sources of revenue “does not transform a misrepresentation case into an omission case and allow a plaintiff to seek refuge in the *Affiliated Ute* presumption.” *Schwab*, 285 F. Supp. 3d at 753; *Crago*, 2021 WL 4990234, at \*3 (“If the omissions are effectively the inverse of the misrepresentations – in that they render the statement alleged to be a misrepresentation untrue – a case is not primarily an omissions case.”).

Without the benefit of these presumptions, Plaintiff had to plead direct reliance on the misstatements allegedly giving rise to this action, but he has not done so. *See Schwab*, 285 F. Supp. 3d at 753 (dismissing claims based on alleged failure to abide by duty of best execution because the plaintiff failed “to allege that he actually read, or was otherwise aware of, E\*TRADE’s representations regarding its best execution methodology”); *In re Van Wagoner Funds, Inc. Sec. Litig.*, 382 F. Supp. 2d 1173, 1187 (N.D. Cal. 2004) (reliance not pled with particularity where the plaintiffs made “no specific allegations that they read the annual reports or registration statements” giving rise to suit). Moreover, to the extent Plaintiff claims he would have used a different broker-dealer had he known about Robinhood’s receipt of PFOF, that contention is completely undermined by the fact that Plaintiff continued to use Robinhood’s trading platform even after PFOF was added to Robinhood’s source of revenue FAQ in October 2018. (SAC ¶¶ 86 (alleging PFOF disclosed in FAQ in October 2018), 96 (alleging Plaintiff used Robinhood to place trades from 2017 through 2019).)

## **II. PLAINTIFF FAILS TO STATE A CLAIM UNDER RULE 10b-5(a) OR 10b-5(c).**

Plaintiff’s Section 10(b) claims should be dismissed to the extent they are based on violations of Rules 10b-5(a) or (c) – the “fraudulent scheme” prongs of Rule 10b-5 – because he

1 fails to allege (i) that Robinhood “committed a deceptive or manipulative act in furtherance of the  
 2 alleged scheme,” (ii) scienter, and (iii) reliance. *In re Nektar Therapeutics*, 2020 WL 3962004, at  
 3 \*13 (N.D. Cal. July 13, 2020); 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

4 Plaintiff’s claim that Robinhood engaged in a scheme to mislead customers about the  
 5 commission-free nature of its trading platform and to obtain PFOF at the expense of price  
 6 improvement and the duty of best execution is unsupported by any facts. Plaintiff fails to plead  
 7 with particularity “the time, place, and manner of each act of fraud, plus the role of each defendant  
 8 in each scheme.” *Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397, 405 (9th  
 9 Cir. 1991); *U.S. ex rel. Perry v. Pac. Mar. Indus. Corp.*, 2015 WL 4401748, at \*5 (S.D. Cal. July  
 10 17, 2015) (rejecting fraud claim under Rule 9(b) where plaintiff did not “allege the identity of the  
 11 individuals engaged with [the fraudulent acts],” and noting that “general reference to the defendant  
 12 [is] insufficient to meet the ‘who’ of the particularity requirement because ‘[p]leaders alleging  
 13 fraud are required to identify individuals involved in the fraud’”); *Taylor v. Westor Cap. Grp.*, 943  
 14 F. Supp. 2d 397, 404 (S.D.N.Y. 2013) (dismissing scheme liability claim where the complaint  
 15 “contain[ed] virtually no details about [the] alleged scheme: it is impossible to tell what  
 16 manipulative acts were performed, who performed them, when they were performed, what  
 17 securities were involved, and what effect this scheme had on the market for those securities”).  
 18 Nowhere in the SAC does Plaintiff identify any of the employees allegedly involved in the scheme  
 19 or the roles they allegedly played.<sup>8</sup>

20 Plaintiff fails to allege scienter and reliance for the same reasons as discussed above, in  
 21 addition to the fact that his scheme liability claims are particularly ill-suited to a presumption of  
 22 reliance. The *Basic* presumption is inapplicable because Plaintiff cannot plausibly allege that the  
 23 supposed scheme impacted the market price of any security. *See In re Smith Barney Transfer*  
 24 *Agent Litig.*, 884 F. Supp. 2d 152, 162 (S.D.N.Y. 2012) (finding that plaintiffs could not invoke  
 25 the fraud-on-the-market presumption in a scheme liability case where the defendants’ “shares  
 26

---

27 <sup>8</sup> Although a scheme to disseminate false or misleading statements may serve as the basis of  
 28 a claim under Rule 10b-5(a) or (c) in some cases, for the reasons discussed above, Plaintiff has  
 failed to allege an actionable misstatement or omission.

never traded in an efficient market”). Moreover, none of the allegedly fraudulent acts were disclosed to the public, which provides independent grounds to reject the *Basic* presumption. *Stoneridge*, 552 U.S. at 159 (holding that plaintiffs cannot rely on the *Basic* presumption in fraudulent scheme cases because the deceptive acts are not “communicated to the public” and thus there is no fraudulent information “reflected in the market price of the security”). Plaintiff alleges that Robinhood’s customers were “unsuspecting,” and he admits that he did not know that Robinhood was allegedly failing to abide by its duty of best execution. (SAC ¶¶ 4, 161.) Likewise, the *Affiliated Ute* presumption is inapplicable in cases such as this, where there are “some omissions, but also misrepresentations and secret manipulation.” *Desai v. Deutsche Bank Sec. Ltd.*, 573 F.3d 931, 941 (9th Cir. 2009). By their very nature, fraudulent schemes must usually “remain undisclosed to the general public” to succeed and the nondisclosure of that scheme does not turn every Rule 10b-5(a) and (c) claim into an omissions case. *See Desai*, 573 F.3d at 941.

### III. DISMISSAL WITH PREJUDICE IS WARRANTED.

The SAC should be dismissed with prejudice in light of Plaintiff’s repeated inability to state a claim for securities fraud notwithstanding this Court’s “detailed instructions as to what [it] needed to do to fix the problems with the complaint.” *Destfino v. Reiswig*, 630 F.3d 952, 958 (9th Cir. 2011) (“The district court’s ‘decision to dismiss the [second] amended complaint with prejudice was appropriate in light of [plaintiffs’] repeated failure to cure deficiencies in [their] pleadings.’”) (quoting *Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir. 1993); *see also Rucker v. Cal.*, 112 F.3d 517, 517 (9th Cir. 1995) (affirming dismissal of second amended complaint where “district court notified [plaintiff] of deficiencies in the first amended complaint and it was clear [defendant] could not cure the deficiencies of his second amended complaint”).

The paltry new allegations in the SAC make clear that Plaintiff cannot cure the fundamental deficiencies in his claims. Plaintiff is completely unable to plead a false or misleading statement, much less allege particularized facts giving rise to a strong inference of scienter or adequately plead reliance. There is no reason to believe that yet another amendment would lead to a different result.

**CONCLUSION**

For the reasons set forth herein, the Court should dismiss the SAC in its entirety with prejudice.

Dated: March 29, 2022

FARELLA BRAUN + MARTEL LLP

By: /s/ Karen Kimmey

Karen Kimmey

Attorneys for Defendants  
ROBINHOOD MARKETS, INC.;  
ROBINHOOD FINANCIAL LLC;  
ROBINHOOD SECURITIES, LLC